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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

OAKDALE GROUNDWATER ALLIANCE et al., Plaintiffs and Respondents, v. OAKDALE IRRIGATION DISTRICT, Defendant and Appellant.	F077281 (Super. Ct. No. 2019380) **OPINION**

APPEAL from a judgment of the Superior Court of Stanislaus County. Roger M. Beauchesne, Judge.

O'Laughlin & Paris, Tim O'Laughlin, Valerie C. Kincaid, and Timothy J. Wasiewski for Defendant and Appellant.

Soluri Meserve, Osha R. Meserve and Patrick M. Soluri for Plaintiffs and Respondents.

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BACKGROUND

On March 15, 2016, Oakdale Irrigation District (District), which holds water rights to and diverts water from the Stanislaus River for distribution and use within its 64,000-acre service area, approved a "One-Year Pilot On-Farm Water Conservation Program and Transfer of Consumptive Use Water" (Project). Pursuant to the Project, participating landowners within District's service area would fallow up to 3,000 acres of farmland during the 2016 irrigation season, potentially conserving up to 9,000 acre-feet of water. The water would be transferred to the San Luis & Delta-Mendota Water Authority and State Water Contractors in exchange for funds to finance the implementation of water conservation measures on the fallowed land. District concluded the Project would have no significant environmental effects based on its initial study and adopted a negative declaration. (*Oakdale Groundwater Alliance v. Oakdale Irrigation District* (Nov. 27, 2018, F076288) [nonpub. opn.] (*Alliance I*).)[1]

Oakdale Groundwater Alliance and members Louis F. Brichetto and Robert N. Frobose (collectively, Alliance) filed a petition for a peremptory writ of mandamus directing District to vacate and set aside its approval of the Project and prepare an environmental impact report (EIR) in accordance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. The superior court granted the petition and issued the writ. It determined (1) " 'an EIR is required and a negative declaration cannot be certified' " because " 'it can be fairly argued on the basis of substantial evidence that the Project in issue may have a significant environmental impact' "; and (2) District's initial study was " 'a minimalistic work-product which fails to meet the basic requirements of the law.' " Judgment was entered on June 5, 2017. We

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[1] Pursuant to Evidence Code sections 452, subdivision (d), and 459, subdivision (a), we take judicial notice of our prior unpublished opinion. (*Bui v. Nguyen* (2014) 230 Cal.App.4th 1357, 1363, fn. 3.) Judicial notice is proper because "it 'help[s] complete the context of [the instant appeal].' [Citation.]" (*Ibid.*)

affirmed this judgment in an earlier appeal, finding substantial evidence in the record supported a fair argument that the Project may have a significant effect on air quality and biological resources and District's initial study did not sufficiently describe the Project as a whole or baseline physical conditions. (*Alliance I, supra*, F076288.)

Following the judgment, Alliance filed a motion for attorney fees pursuant to Code of Civil Procedure section 1021.5,[2] which was granted. In the instant appeal, District claims the superior court's order granting an award of attorney fees was erroneous because Alliance (1) "failed to demonstrate that the CEQA action provided a significant benefit to the general public"; and (2) "failed to demonstrate that the necessity and financial burden of private enforcement made an award of attorneys' fees appropriate." (Boldface & some capitalization omitted.) For the reasons set forth below, we reject District's contentions and affirm the order.

DISCUSSION

I. Standard of review.

"Generally, an order granting or denying attorney fees under section 1021.5 is reviewed for abuse of discretion." (*Bui v. Nguyen, supra*, 230 Cal.App.4th at p. 1367.) "We will not disturb the trial court's ruling absent a showing that there is no reasonable basis in the record for the award." (*RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 776.) "Moreover, in examining the order on appeal, we review the trial court's actual ruling, not its reasons. We therefore will affirm an order correct [upon any] theory . . . ." (*Ibid.*; accord, *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.)

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[2] Unless otherwise indicated, subsequent statutory citations refer to the Code of Civil Procedure.

II. Analysis.

"Section 1021.5 codifies the private attorney general doctrine . . . , which ' " ' " 'rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible.' " ' " ' [Citation.] The doctrine's purpose 'is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases.' [Citation.]" (*Children & Families Com. of Fresno County v. Brown* (2014) 228 Cal.App.4th 45, 54-55.) The private attorney general theory applies to an action to enforce provisions of CEQA. (*Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2015) 238 Cal.App.4th 513, 521; *Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1184; *Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg* (2012) 206 Cal.App.4th 988, 992; *Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 612.)

"A court may award attorney fees under section 1021.5 only if the statute's requirements are satisfied. Thus, a court may award fees only to 'a successful party' and only if the action has 'resulted in the enforcement of an important right affecting the public interest . . . .' [Citation.] Three additional conditions must also exist: '(a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.' " (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 250-251, quoting § 1021.5.) "As has been observed, the necessity and financial burden requirement ' "really examines two issues: whether private enforcement was necessary and whether the financial burden of private

enforcement warrants subsidizing the successful party's attorneys." ' [Citation.]" (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214-1215 (*Whitley*).)

a. *Alliance's CEQA action conferred a significant benefit on the general public*.

"[A]lthough [section 1021.5] does not define with precision the nature of the 'benefit' that is contemplated by the provision, the statutory language and prior authorities afford some guidance on the issue. First, the explicit terms of the statute provide that the 'significant benefit' conferred by the litigation may be either 'pecuniary or nonpecuniary' in nature; thus, the fact that the chief benefits afforded by an action have no readily ascertainable economic or monetary value in no way forecloses an attorney fee award under the statute. This language recognizes that in many cases the important gains or contributions rendered by public interest litigation will be reflected in nonmonetary advances." (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 939.) "Second, as [California Supreme Court precedent] explains, under the private attorney general doctrine, . . . the 'significant benefit' that will justify an attorney fee award need not represent a 'tangible' asset or a 'concrete' gain but, in some cases, may be recognized simply from the effectuation of a fundamental constitutional or statutory policy. [Citation.]" (*Ibid.*, italics omitted; see *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 233 ["The benefit may be conceptual or doctrinal . . . ."].) "The fact that litigation enforces existing rights does not mean that a substantial benefit to the public cannot result. Attorney fees have consistently been awarded for the enforcement of well-defined, existing obligations." (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 318.)

"CEQA is a comprehensive scheme designed to provide long-term protection to the environment." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112 (*Mountain Lion*).) In enacting this statute, the Legislature has declared "[t]he maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern." (Pub. Resources Code, § 21000, subd. (a); see *id.*,

§ 21001 ["The Legislature further finds and declares that it is the policy of the state to: [¶] . . . [¶] (b) Take all action necessary to provide the people of this state with clean air . . . . [¶] (c) Prevent the elimination of fish or wildlife species due to man's activities . . . and preserve for future generations representations of all plant and animal communities . . . ."].) CEQA "contains a 'substantive mandate' requiring public agencies to refrain from approving projects with significant environmental effects if 'there are feasible alternatives or mitigation measures' that can substantially lessen or avoid those effects." (*County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 98, italics omitted, quoting *Mountain Lion*, *supra*, at p. 134.) "Whenever a project may have a significant and adverse physical effect on the environment, an EIR must be prepared and certified." (*Mountain Lion*, *supra*, at p. 113.) This report "is the mechanism prescribed by CEQA to force informed decision making and to expose the decision making process to public scrutiny." (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 910.) The EIR is "an environmental 'alarm bell' whose purpose . . . is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.) " 'CEQA excuses the preparation of an EIR and allows the use of a negative declaration when an initial study shows that there is no substantial evidence that the project may have a significant effect on the environment.' [Citations.]" (*McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 270.)

Here, District adopted a negative declaration and approved the Project. Alliance filed the writ petition and District, for its part, did not proceed with the Project. As brought to light by Alliance's CEQA action, District's preparation of a negative declaration rather than an EIR was unacceptable. Substantial evidence in the form of comments from Brichetto, Frobose, and the California Department of Fish and Wildlife supported a fair argument that the Project may have a significant and adverse physical

effect on air quality and biological resources, i.e., various threatened, endangered, and/or special status plant and/or wildlife species. In addition, District's initial study, which underpinned the negative declaration, did not properly evaluate the potential impacts on air quality and biological resources because it failed to describe the Project as a whole and the baseline physical conditions. (*Alliance I*, *supra*, F076288.) These were egregious defects, not " 'minute blemish[es]' . . . that could be remedied without the preparation of an EIR." (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 895, citing *Concerned Citizens of La Habra v. City of La Habra* (2005) 131 Cal.App.4th 329, 335.)

District contends no significant benefit was conferred on the general public because "approval for the one-year Project expired on its own terms before the [j]udgment in this matter was entered," meaning any "additional disclosure and analysis of environmental impacts" via an EIR "will not occur." We disagree. Notwithstanding this expiration of approval, the fact is District "w[as] prevented . . . from undertaking or permitting ill-considered intrusion on sensitive areas of the environment." (*Coalition for L.A. County Planning Etc. Interest v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 248, fn. 7.) District also stresses "the [superior court's] judgment . . . will not have any precedential value with respect to any other projects that [it] is currently implementing or planning to implement." Even absent precedential value, a significant benefit "flowed directly and immediately from the decision of the court." (*Coalition for L.A. County Planning Etc. Interest v. Board of Supervisors*, *supra*, at p. 248, fn. 7.)

b. *Private enforcement was necessary.*

"[T]he 'necessity . . . of private enforcement' has long been understood to mean simply that public enforcement is not available, or not sufficiently available." (*Whitley*, *supra*, 50 Cal.4th at p. 1217.)

Alliance brought a CEQA action against District and successfully proved District breached its statutory duties. "Where, as here, a lawsuit is brought against the very

governmental entity and officials who refuse to comply with their admitted statutory responsibilities, the 'necessity of private enforcement' portion of the test is readily met." (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 85; see *Committee to Defend Reproductive Rights v. A Free Pregnancy Center* (1991) 229 Cal.App.3d 633, 639 ["Where a private suit is brought against a governmental agency or official, the necessity of private enforcement is often obvious. A governmental agency cannot be expected to bring suit against itself. In such situations, private citizens must ' "guard the guardians." ' "].)

c. *Assuming, arguendo, Alliance's expected benefits substantially exceeded the costs of the litigation, the significant public benefit still justified the award of attorney fees.*[3]

"In determining the financial burden on litigants, courts have quite logically focused not only on the costs of the litigation but also any offsetting financial benefits that the litigation yields or reasonably could have been expected to yield. ' "An award on the 'private attorney general' theory is appropriate when the cost of the claimant's legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff 'out of proportion to his individual stake in the matter.' [Citation.]" ' [Citation.]" (*Whitley*, *supra*, 50 Cal.4th at p. 1215.)

" '[T]he financial burden criterion is interrelated with the other pertinent criteria under section 1021.5. If public benefits are very significant, it is more important to encourage litigation, and thus it may be appropriate to award fees under section 1021.5 "even in situations where the litigant's own expected benefits exceed its actual costs by a substantial margin." [Citation.] In contrast, if public benefits are modest, "the courts should award fees only where the litigant's own expected benefits do not exceed its costs

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[3] Because we address the merits, we need not consider Alliance's claim of forfeiture.

by very much (or possibly are even less than the costs of the litigation)." [Citation.]' " (*Lyons v. Chinese Hospital Assn.* (2006) 136 Cal.App.4th 1331, 1353.)

District asserts Alliance's litigation costs did not transcend its personal interests. Even if we assume Alliance's own expected financial benefits "exceed[ed] actual litigation costs by a substantial margin, the public benefit[] from the litigation [is] so significant that an award of fees under section 1021.5 is appropriate." (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1417, disapproved in part by *Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1153, fn. 6; see *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 823 [public agency's full compliance with CEQA's requirements is only way to avoid subversion of CEQA's important public policies].)

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondents Oakdale Groundwater Alliance, Louis F. Brichetto and Robert N. Frobose.

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DETJEN, J.

WE CONCUR:

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LEVY, Acting P.J.

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FRANSON, J.